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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,034	10/14/2003	Young Kook Cho	A101-JN	3178

7590

07/01/2005

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EXAMINER

GEHMAN, BRYON P

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/684,034	CHO, YOUNG KOOK	
	<b>Examiner</b>	<b>Art Unit</b>	
	Bryon P. Gehman	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 6-10 and 15-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 9-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

1. Applicant's election without traverse of species I in the paper filed June 2, 2005 is acknowledged. Claims 6-8 and 15-20 have been withdrawn from consideration.

2. The drawings are objected to because Figure 1 is not labeled as "Prior Art". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-5 and 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 1, "having an externally threaded mouth and a neck" is indefinite whether such is referring to the "cap device" or the "bottle". In line 3, "said externally threaded mouth" and in lines 3, 14 and 16-17, "said bottle", each phrase lacks antecedent basis, as "cap device for a bottle" fails to define a bottle per se. See also lines 12 and 15, where "said neck of said bottle" lack antecedent basis for existing in the scope of the claimed cap device.

In claim 9, line 2, "said additive" lacks antecedent basis as part of the claimed "bottle having a cap device", as such is not positively included.

In claim 10, line 1, "said inner surface lacks antecedent basis.

Art Unit: 3728

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-2 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bubb (3,489,306). Disclosed is a cap device (14 and 16) comprising a cap body (14), a funnel part (32 and 33) having an opening (at 34) and integrated with the cap body, a cap cover (16), a valve member (32 and 33) having a valve part (30) and a shank (30 above 28 and 29), the shank extending into the cap body through the opening (at 34), wherein the valve member seals the opening when the cap body is twisted onto a bottle, and the valve member is disengaged and not sealing the opening when not.

As to claim 2, the shank (30 above 28 and 29) is wedged into the opening and has a wedge shape.

As to claim 9, a bottle (cylindrical glass vessel 12) is disclosed.

7. Claims 1-2 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Goncalves (4,386,696). Disclosed is a cap device (4 and 8, or 31 and 38) comprising a

cap body (5 or 31), a funnel part (7 or 35) having an opening (at its lower end) and integrated with the cap body, a cap cover (8 or 38), a valve member (12 or 37 or 39) having a valve part and a shank (9 or as shown) extending into the cap body through the opening (at its lower end), wherein the valve member seals the opening when the cap body is twisted onto a bottle, and the valve member is disengaged and not sealing the opening when not.

As to claim 2, the shank (9 or upraised portion of 38) is wedged into the opening and has a wedge shape as much as defined.

As to claim 9, each embodiment discloses a bottle (1 or 28).

As to claim 10, each embodiment discloses a neck that is internally tapered.

As to claim 11, each embodiment discloses the shank having a wedge-shaped tip as much as defined.

8. Claims 1-2 and 9-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Alticosalian (6,763,939). Disclosed is a cap device (1) comprising a cap body (2), a funnel part (3) having an opening (25) and integrated with the cap body, a cap cover (4 or 21), a valve member (5) having a valve part (free end of 5) and a shank (remainder of 5) extending into the cap body through the opening, wherein the valve member seals the opening when the cap body is twisted onto a bottle, and the valve member is disengaged and not sealing the opening when not.

As to claim 2, the shank (remainder of 5) is wedged into the opening and has a wedge shape as much as defined.

As to claim 9, Alticosalian discloses a bottle (31).

As to claim 10, Alticosalian discloses a neck that is internally tapered.

As to claim 11, Alticosalian discloses the shank having a wedge-shaped tip as much as defined.

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-3 and 9-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of copending Application No. 10/683996. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim similar subject matter without clearly distinguishing one from the other. Claimed in the other application is a cap device comprising a cap body (100), a funnel part (52) having an opening (52K) and integrated with the cap body, a cap cover (120), a valve member having a valve part and a shank (14) extending into the cap body through the opening,

wherein the valve member seals the opening when the cap body is twisted onto a bottle, and the valve member is disengaged and not sealing the opening when not.

As to claim 2, the shank (remainder of 5) is wedged into the opening and has a wedge shape as much as defined.

As to claims 3 and 12, Application No. 10/683996 claims radial ribs.

As to claim 9, Application No. 10/683996 discloses a bottle (13).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1-3 and 9-12 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 and 7 of copending Application No. 10/684036. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim similar subject matter without clearly distinguishing one from the other. Claimed in the other application is a cap device comprising a cap body (100), a funnel part (52) having an opening (at 20) and integrated with the cap body, a cap cover (120), a valve member having a valve part and a shank (14) extending into the cap body through the opening, wherein the valve member seals the opening when the cap body is twisted onto a bottle, and the valve member is disengaged and not sealing the opening when not.

As to claim 2, the shank (remainder of 5) is wedged into the opening and has a wedge shape as much as defined.

As to claims 3 and 12, Application No. 10/684036 claims radial ribs.

As to claim 9, Application No. 10/684036 claims a bottle (13).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1-5 and 9-14 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3, 4 and 8 of copending Application No. 10/995700. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim similar subject matter without clearly distinguishing one from the other. Claimed in the other application is a cap device comprising a cap body (100), a funnel part (52) having an opening (at 20) and integrated with the cap body, a cap cover (120), a valve member having a valve part and a shank (14) extending into the cap body through the opening, wherein the valve member seals the opening when the cap body is twisted onto a bottle, and the valve member is disengaged and not sealing the opening when not.

As to claim 2, the shank (remainder of 5) is wedged into the opening and has a wedge shape as much as defined.

As to claims 3 and 12, Application No. 10/995700 claims radial ribs.

As to claims 4-5 and 13-14, Application No. 10/995700 claims a venting tube.

As to claim 9, Application No. 10/995700 claims a bottle (13).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

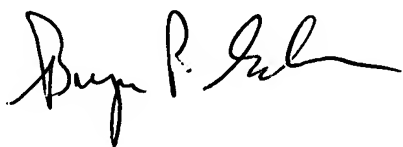


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are similar cap devices and bottles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG